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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

CARL GANS AND KATHERINE GANS,
Petitioners,

vs.

STATE OF OHIO,
Respondent.

BRIEF OF RESPONDENT STATE OF OHIO

JOHN D. SEARS, JR.,
Prosecuting Attorney, Crawford County, Ohio,
Farmers Citizen Bank Bldg., Bucyrus, Ohio,
Counsel for Respondent.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

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CONCISE STATEMENT OF OPERATIVE FACTS

Karlene Gans, one and the same person as Kay Gans, was adopted by the defendants below, the petitioners herein, Carl Gans, and Katherine Gans, in August, 1945, which said Karlene Gans was just a baby about 2 months old. There was some argument about the exact date of Karlene's birth but the record shows that it seems to have been pretty well accepted formerly that she was born October 12, 1944 in Mason City, West Virginia.

In July, 1951, the Juvenile Court of Crawford County, Ohio, after citations were personally served on the petitioners herein, Carl Gans, and Katherine Gans, adopted parents of said child; and after a hearing by said Juvenile Court, found said child was neglected and the court ordered

that the child be made a ward of the court but continued in the custody of the adoptive father, Carl Gans, to be cared for by a Mrs. Paul Wisley in her home. The said child, Karlene Gans, has been and still is a ward of the Juvenile Court of Crawford County, Ohio.

On or about the twenty-fourth day of October, 1955, when said Karlene Gans was just about two weeks past her eleventh birthday, she, along with one Stanley Thorn, the petitioners herein, Carl Gans and Katherine Gans, her adoptive parents, traveled from Crawford County, Ohio, to Morgantown, West Virginia, and there Karlene Gans and Stanley Thorn applied for a marriage license, the said Karlene Gans giving her age as 17 years. The petitioners, Carl and Katherine Gans, as her parents, signed their consent to the application and shortly thereafter, Karlene Gans and Stanley Thorn were married. These facts above stated are undisputed by the petitioners herein.

The record (bill of exceptions, page 76, Q. 5; pages 32 and 33, Q. 12 to 28, inclusive; and page 47, Q. 9) shows that the petitioners herein, Carl Gans and Katherine Gans, agreed and consented in Crawford County, Ohio, to take their 11-year-old daughter, Karlene Gans, to Morgantown, West Virginia, for the purpose of entering into an illegal, although not void ab initio, marriage with one Stanley Thorn, and said petitioners did in fact, take said Karlene Gans and Stanley Thorn from Crawford County, Ohio, to Morgantown, West Virginia, for the purpose of getting married.

Subsequently, Karlene Gans and Stanley Thorn returned to Crawford County, Ohio, and lived with petitioners herein, Carl Gans and Katherine Gans, as husband and wife, and cohabited as husband and wife in Crawford County, Ohio.

HISTORY OF LITIGATION

On February 8, 1956, the Juvenile Court of Crawford County, Ohio, became aware of this state of affairs, and ordered that the said child, Karlene Gans, be cared for by the Child Welfare Board until further order, and complaints were filed against the petitioners herein, Carl Gans and Katherine Gans, charging them with acting in a way tending to cause the delinquency of Karlene Gans. Counsel for the State of Ohio agreed that the charges against the parents would be tried on the same record and by the same jury which was agreeable with counsel for the parents.

Trial was held and on the twenty-ninth day of March, 1956, the jury found both the petitioners herein, Carl Gans and Katherine Gans, guilty of acting in a way tending to cause the delinquence of Karlene Gans, and on the seventh day of April, 1956, judgment of the Juvenile Court on said verdicts was rendered and on the seventh day of April, 1956, sentence on said judgment of said Juvenile Court was made.

On the nineteenth day of February, 1957, the matter was heard by the Court of Appeals and on the fifteenth day of April, 1957, judgment of the Court of Appeals was rendered reversing the judgment of the Juvenile Court. Appeal was taken by the State of Ohio to the Supreme Court of Ohio and on the ninth day of July, 1958, the judgment of the Court of Appeals of Ohio was reversed and the judgment of the Juvenile Court of Crawford County, Ohio, was affirmed by the Supreme Court of Ohio. Counsel for the petitioners herein filed a motion for rehearing before the Supreme Court of Ohio which was denied, and the matter now comes before this court on the petition for writ of certiorari.

REASONS WHY WRIT SHOULD BE DENIED

The petitioners herein have attempted to set up in their petition and brief four reasons why the Supreme Court of the United States should grant the writ of certiorari. These reasons will be covered by the State of Ohio in the same order as they have been presented in the petitioners' brief, clearly showing that unless the Supreme Court of the United States intends to start a precedent in granting all writs of certiorari there are no grounds for the granting of the writ of certiorari in the instant case, regardless of whether or not the Supreme Court of the United States agrees or disagrees with the decision of the Supreme Court of Ohio.

1. The petitioners in their first and second reasons are trying to claim that the interpretation given a statute of Ohio and the ruling on the trial court's charge is a constitutional question under the Fourteenth Amendment in that the petitioners were denied a fair trial and that it invokes the principles of liberty and justice. The court is not interested in a lengthy argument as to the reasons justifying the interpretation of Section 2151.02 of the Revised Code of Ohio by the Supreme Court of Ohio or the reasons that the Supreme Court of Ohio ruled there was no prejudicial error in the trial court's charge so as to justify the petitioners in having a new trial, but the court is concerned in this hearing whether or not the state court violated the Constitution of the United States of America so as to justify the granting of the writ of certiorari. If the interpretation of the state statute by the state court or the ruling of whether or not the trial court committed error is a constitutional question to be ruled on by the Supreme Court of the United States then the Supreme Court of the United States must allow all writs of certiorari. In this

case the petitioners had their trial and the review of the Court of Appeals to which they were entitled and a further review by the Supreme Court of Ohio. Nothing in this proceedings was in derogation of the Constitution of the United States of America any more than in any other case that ran the gamut of our state courts where the ultimate result was unsatisfactory to one or the other of the parties. As to the matter of any question arising under the Constitution of the United States, let it be said that if every case wherein petitioners for a writ of certiorari claimed that the judgment of the state court was erroneous were to be admitted for further reviewing by the Supreme Court of the United States, a disastrous result would ensue in that the Supreme Court of the United States would be swamped with applications to review every state decision to which disgruntled litigants took exception, and the sovereignty of the various states would be in serious jeopardy. Practically all cases that are appealed to the Court of Appeals of Ohio and to the Supreme Court of Ohio are based on the claim that the trial court committed prejudicial error in the interpreting or applying the state law pertaining to the particular case.

2. The petitioners in this case were charged with "Acting in a way tending to cause the delinquency of Kay Gans", as defined by Section 2151.41 of the Revised Code of Ohio, (Appendix A, p. 1) and by adding the words "in that they did consent to said child securing a marriage license and misrepresenting her age" does not limit the jury to subdivision (E) under Section 2151.02 of the Revised Code which section defines a delinquent child but is only a statement of the operative facts which the state claims tended to cause delinquency in Kay Gans, and therefore the petitioners were not deprived of due process of law as

counsel for the petitioners wants you to believe. The question that was before the jury and properly presented to the jury was whether or not the defendants were guilty of any action tending to cause the delinquency of their adopted daughter, Kay Gans.

3. The petitioners claim that the Supreme Court of Ohio clearly erred in basing its affirmance of conviction upon a prognosis of future events which were completely unsupported by the record and now hope that the Supreme Court of the United States will decide whether or not the Supreme Court of Ohio used good wisdom and sound judgment, in its opinion, in finding that where a child just two weeks past her eleventh birthday was allowed to enter into marriage, that such act would cause her to become a delinquent.

It is not for me to say that where parents consent and cooperate with their infant child of eleven years of age to enter marriage whether or not such child will become a habitual truant from school or whether or not such an act would come under the classification of a person who so deports herself as to injure or endanger the morals or health of herself or others, but this is a matter for the trial court and the reviewing courts to decide such questions under the laws of Ohio, based upon the facts presented and the fact that the petitioners herein do not agree with five judges of the Supreme Court of Ohio surely does not justify the Supreme Court of the United States to again review the facts to determine whether or not in their opinion they agree with the Supreme Court of Ohio, as this is not a constitutional question and not a matter for the Supreme Court of the United States. The fact that the petitioners or counsel for the petitioners claim that there is no logical answer to the Supreme Court of Ohio's illogical decision is not a basis for the Supreme Court of

the United States to review this case. If this were the case, it would amount to the Supreme Court of the United States challenging the wisdom and judgment of the Supreme Court of Ohio in arriving at the conclusion that certain events could happen as a result of a child two weeks past her eleventh birthday entering into marriage.

4. In regard to whether or not Crawford County, Ohio, was the proper venue for bringing this action, it is the State of Ohio's contention substantiated by the record that the chain of uninterrupted events started in Crawford County, Ohio, even though the actual marriage was consummated in the State of West Virginia. This whole chain of uninterrupted events was not only conceived but was initiated in Crawford County, Ohio, the packing of the bags, if any, took place in Crawford County, Ohio; the trip from Crawford County, Ohio, through the county, through neighboring counties, across the Ohio River to West Virginia was initiated within Crawford County, Ohio, and as the record discloses, the purpose of this trip was primarily for Kay Gans to enter into marriage with one Stanley Thorn (Record, p. 76, Q. 5; pages 32 and 33, Q. 12-28, inclusive; page 47, Q. 9). The guilt of the petitioners is as certain as the guilt of a person charged with homicide who intentionally loosed a bullet in Crawford County, Ohio, that passed over intervening counties and struck the victim across the Ohio River in West Virginia.

CONCLUSION

For the foregoing reasons, the petitioners' petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN D. SEARS, JR.,
Prosecuting Attorney, Crawford County, Ohio,
Farmers Citizen Bank Bldg., Bucyrus, Ohio,
Counsel for Respondent.

APPENDIX A
Statutes Involved

(Page's) Ohio Revised Code Section 2151.41

Prohibition against abuse of or abetting delinquency of child. No person shall abuse a child or aid, abet, induce, cause, encourage, or contribute to the dependency, neglect, or delinquency of a child or a ward of the juvenile court, or act in a way tending to cause delinquency in such child. No person shall aid, abet, induce, cause or encourage a child or a ward of the court, committed to the custody of any person, department, public or private institution, to leave the custody of such person, department, public or private institution, without legal consent. Each day of such contribution to such dependency, neglect, or delinquency is a separate offense.

(Page's) Ohio Revised Code Section 2151.02

"Delinquent child" defined. As used in Sections 2151.01 to 2151.54, inclusive, of the Revised Code, "delinquent child" includes any child:

(A) Who violates any law of this state, the United States or any ordinance or regulation of a subdivision of the state;

(B) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(C) Who is an habitual truant from home or school;

(D) Who so deports himself as to injure or endanger the morals or health of himself or others;

(E) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority.